

GENERAL TERMS AND CONDITIONS - CREDIT FACILITIES

DEFINITIONS

In this Agreement, the following words and expressions shall, unless inconsistent with or otherwise indicated by the context, have the following meanings and cognate expressions shall have corresponding meanings:-

- a. Account;** means the current/savings and loan account opened in our books and referred to in the Application.
- b. 'Agreement'** means together the Borrower's Application, letter of Offer and these Terms and Conditions, all as maybe amended, substituted or novated from time to time .
- c. 'Application'** means the Borrower's application for a loan facility (ies).
- d. 'Bank','we', 'us' or 'our';** means Consolidated Bank of Kenya Limited and its successors and assigns.
- e. 'Borrower', 'you' or 'your'** means the applicant together with the co-applicant (if any) named in the Application and his or their personal representative and heirs.
- f. 'Business Day'** means a day on which the Bank is ordinarily open to effect the transactions contemplated in these terms.
- g. 'Credit Rating'** means an assessment of the credit worthiness of individuals and or Corporations that is based upon the history of borrowing and repayment, as well as the availability of assets and extent of liabilities.
- h. 'Conditions'** means these Conditions as varied from time to time by the Bank.
- i. 'Interest Period'** means a period of one month (in case of first interest period) commencing on the date of first disbursement of the loan (or any part of the loan) as determined by the Bank and (in case of any subsequent Interest Period) commencing on the last day of the immediately preceding Interest Period and in each case ending on the corresponding day of the following month **provided that** if any Interest Period would end on a day which is not a Business Day or there is no corresponding day in the following month it shall end on the next succeeding Business Day unless it would otherwise fall into the next calendar month in which event it shall end on the immediately preceding Business Day and **provided further that** the final Interest Period relative to the Loan shall end on the date of its final repayment.
- j. 'Letter of Offer'** means the offer by the Bank in writing to make available to the Borrower a loan facility upon the terms.
- k. 'Loan'** means the aggregate of the principal amount of the loan referred to in the Letter of Offer advanced to the Borrower , or so much thereof as may have been disbursed and is from time to time , owing by the Borrower.
- l. "BASE RATE (BR)"** means the Base Rate Set and Published by the Central Bank of Kenya from time to time.
- m. 'Monthly Repayment Instalment'** means each instalment in respect of the repayment of the loan together with interest calculated in accordance with the provisions herein and which the Borrower is required to pay to the Bank on the last day of each Interest Period in the amount notified from time to time by the bank as set out herein.
- n. 'Repayment Date'** means the due date for payment of all amounts due and payable as shown in your statement and or as notified by the bank.
- o. 'Prepayment'** means repaying all or part of the loan ahead of schedule.
- p. 'Security'** means any property movable or immovable that the Bank may require for the Borrower to charge to it, so as to secure a part or whole of the Loan amount and includes property which may be charged for this purpose by a third party on behalf of the Borrower and further includes any guarantee or indemnity

given to the bank by such third party for and on behalf of and at the request of the Borrower.

- q. **'Guarantor'** means a person who undertakes to pay, the amount owing in terms of this Agreement in the event of default by the Borrower.
- r. **'Terms'** means the terms and conditions contained in the Letter of Offer and these Conditions.
- s. **Headings** – The headings herein are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- t. **Governing Law** – This Agreement will be governed by, and construed in accordance with, the laws of Kenya.
- u. **Invalidity of Any Provision** – If any covenant, obligation or provision contained in this Agreement will be invalid or unenforceable, the remainder of this Agreement will not be affected thereby and each covenant, obligation or provision of this Agreement will separately be valid and enforceable to the fullest extent permitted by law.
- v. **Conflict with Other Documents** – If the provisions of the Loan Application and or Letter of Offer, or any of them conflict with, or are inconsistent with, the provisions of this Terms and Conditions, the provisions of this Terms & Conditions will prevail.
- w. **Counterparts** – This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement.
- x. **Joint Obligations** – If more than one person constitutes the Borrower the agreements of, and all obligations and covenants to be performed and observed by, the Borrower hereunder will be the joint and several obligations and covenants of each of the persons comprising the Borrower and any request or authorization given to the Bank by any of the persons comprising the Borrower will be deemed to be the joint and several requests or authorizations of each of the persons comprising the Borrower. If there is a Guarantor and more than one person constitutes the Guarantor the agreements of, and all obligations and covenants to be performed and observed by, the Guarantor hereunder will be the joint and several obligations and covenants of each of the persons comprising the Guarantor.

- y. **Date for Action** – If any date on which any action required to be taken hereunder by either party is not a Business Day such action will be required to be taken on the next following Business Day.
- z. **Entire Agreement** – This Agreement, including any schedules hereto, and the Securities constitute the entire agreement between the parties relating to the Loan facility, expressly superseding all prior agreements and communications (both oral and written) between any of the parties hereto with respect to all matters contained herein, and except as stated herein or in the Securities or any other instruments and documents to be executed and delivered pursuant hereto, contain all the representations and warranties of the respective parties.
- . **Included Words** – Whenever the singular or the masculine is used herein the same will be deemed to include the plural or the feminine or the body corporate where the context or the parties so require.

1. PAYMENTS

The Borrower shall pay (by way of a written payment instruction acceptable to the Bank or such other means as may be acceptable to the Bank) all amounts owing to the Bank in terms of the loan agreement into the bank account nominated for this purpose by the Bank

1.1 Repayment Instalments

- 1.1.1 The loan will be repaid by the Borrower together with the interest by the number of equal Monthly Instalments specified in the Letter of Offer on each Repayment Date (each of an amount notified to the Borrower by the Bank in writing from time to time in accordance with **Clause 1.1.2**) provided that the final instalment shall always be the balance of the Loan.
- 1.1.2 The Bank will as and when necessary notify the Borrower in writing or any other means, of any adjustment required in the amount of the Monthly Repayment Instalments payable as a result of any change in the interest rate calculated by the Bank in accordance with **Clause 1.5**.
- 1.1.3 The time for payment of each Monthly Instalment by the Borrower shall be of the essence.
- 1.1.4 All payments by you, whether of the principal amount, interest, fees, costs, charges or otherwise, will be made in fully cleared funds, without set off or

counterclaim, and free and clear of any deduction or withholding on account of tax or otherwise.

1.1.5 If the Borrower does not make a payment required to be made pursuant to this Agreement, the Borrower authorizes the Bank to deduct the amount of the payment from any of the Borrower's accounts held with the Bank.

1.1.6 In the case of a partial payment by the Borrower the Bank may appropriate such payment towards such of the obligations of the Borrower under this Agreement as the bank may decide. The Borrower waives any right to make an appropriation in respect of a partial payment.

1.1.7 Notwithstanding that the Bank may allow you to reduce the outstanding balance on your Loan in monthly instalments as set out in this Agreement and as may be amended from time to time, the monthly instalment payable by you does not imply that the said loan will be repaid in full over its initial term, as a result of redraws and/or subsequent deposits made into the loan account and/or fluctuations in the interest rate applicable from time to time

1.1.8. Except as may be otherwise mutually agreed, the Loan shall be immediately repayable on demand.

1.2 Place of Payment

All payments due to the Bank under this Agreement shall be made at the Branch of the Bank issuing the Letter of Offer or at such other Branch as the Borrower may be notified by the Bank in writing in Kenya Shillings in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings, in immediately available, freely transferable, cleared funds during normal banking business hours. If any sum falls due for payment on a day which is not a day the Bank is open for the conduct of normal banking business at the relevant Branch it shall be made on the immediately preceding day on which the Bank is open for business at such Branch.

1.3 Application of Payment Proceeds

1.3.1 All payments received by the Bank in respect of the Loan shall be credited only when the payment shall have been received at the relevant Branch of the Bank in cleared funds. Any payments

otherwise credited by the Bank in respect of the Loan shall be subject to receipt by the Bank at the relevant branch of the Bank of cleared funds and in default shall not be deemed credited until receipt of cleared funds.

1.3.2 All payment received in respect of the Loan shall be applied in or towards:-

a. Firstly, to satisfy any due or unpaid interest charges.

b. Secondly, to satisfy any charges, costs, expenses payable by the Borrower under Agreement

c. Thirdly, to reduce the amount of the principal debt.

1.4 Prepayment

1.4.1 The borrower may at any time prepay the whole or any part of the loan together with interest and accrued interest due to (and including) the date of prepayment and all other amounts payable under and relation to this Agreement subject to any payment being applied in the order specified in **Clause 1.3.2** herein.

1.4.2 In the case of early part payment of the loan, unless the monthly repayment instalments as stipulated in this Agreement are rescheduled and or varied by written agreement between you and us, this early reduction will not affect your obligations to continue paying instalments as stipulated in this Agreement until the loan, including all interest thereon, has been repaid in full.

1.4.3 No amount prepaid under this Agreement may be redrawn.

1.4.4 Notwithstanding the aforesaid, the Bank reserves the right to charge the Borrower a pre-payment fees/interest as allowable by Law.

1.5 Interest

1.5.1 The Borrower will pay interest (as well as after as before any demand or judgment or the bankruptcy of the Borrower) on the Loan in respect of each Interest Period at the rate per annum specified in this Agreement.

1.5.2 Interest will accrue from day to day and shall be calculated on a daily basis on the outstanding balance and on the basis of a 365-day year, irrespective of whether or not the year in question is a leap year and shall be paid on each repayment Date

1.5.3 The interest charged under this loan is linked to BR by a margin related to the BR, which margin is determined by the

Bank subject to the maximum margin provided by the Law. The Bank may, from time to time, vary the interest rate and or margin applicable to your loan if the BR fluctuates during the agreed term of the loan. If the Bank elects to do so, advice of the amendment and its effective date will be sent to you in compliance with the law.

1.5.4 The Bank reserve the right to vary the rate of interest payable and or margin chargeable on the Loan in line with market conditions or if in our opinion the conduct on your account increases our risk regarding the debt, provided that this amended rate does not exceed the legal maximum permissible rate, where applicable. If we elect to do so, advice of the amendment and its effective date will be sent to you in compliance with the law.

1.6 Interest on Overdue Payments

1.6.1 Any money payable under this Agreement which is not paid when due by the Borrower shall bear interest on a daily basis at a rate to be determined by the Bank from time to time, as the Bank may deem fit, from the date on which such money fell due to the date on which it is actually paid. Such interest shall be calculated by reference to such successive defaults Interest periods as the Bank may from time to time select.

1.6.2 Interest shall be charged at the rate per annum determined by the Bank to be equal to 10% per annum on the overdue payment or such other rate as the Bank may prescribe. Interest so accrued shall be due on demand or (in the absence of demand) on the last day of the default interest period in which it accrued and, if unpaid, shall be compounded on the last day of that and each successive Interest Period. Interest shall be charged and compounded on this basis before and after any judgment obtained under this Agreement.

1.7 Costs, Fees and Expenses

1.7.1 The Borrower hereby irrevocably authorizes the Bank to debit any of the Borrower's account held with the Bank and recover (whether or not the loan is drawn) all legal fees, charges

, debt collection costs and other out of-pocket expenses (including stamp duty and value added tax (including penalties for late stamping) incurred by the Bank in connection with taking of any steps by or on behalf of the Bank in the creation or any revaluations of security (if any) or the enforcement or preservation by the Bank of its rights under this Agreement or otherwise or under any amendments hereto.

1.7.2 The Bank may charge and recover all fees, costs and charges referred to in this Agreement and all fees, costs, charges, taxes and duties the Bank may incur or pay in connection with the preparation, conclusion or enforcement of the loan, including:

a. legal costs, charges, debt collection costs, taxes and other fees or disbursements incidental thereto or incurred in recovering or endeavouring to recover all or any amounts owing us, where applicable;

b. where applicable, the cost of any insurance for which the Bank may pay the premiums on the Borrower's behalf under this Agreement.

c. an upfront commission fee (to be set out in the Letter of Offer) chargeable and will be debited to the Borrower's account or paid for in cash.

1.7.3 The Borrower must pay to the Bank all applicable fees and charges set out herein in this **Clause 1.7**, together with the principal debt and interest on the principal debt as set out in this Agreement.

1.8 Set-Off

1.8.1 In the event of default and in addition to and without limitation to any rights now or hereafter granted under any applicable law or the Securities, the Bank may without notice to the Borrower and at any time and from time to time, and notwithstanding any settlement of amounts or other matter whatsoever consolidate or combine all or any of Borrower's existing accounts with the Bank at any branch of the Bank, including those held in our name or yours alone, or jointly or severally with others wherever situate (whether current, deposit, loan or any other accounts of any nature whatsoever whether subject to notice

or not) and set off or transfer any sum standing to the credit of any one or more accounts in or toward satisfaction of any obligations or indebtedness to the Bank, whether those liabilities be present, future, actual, contingent, security, joint or several. The Borrower waives any rights of set off that you may have, so far as is permitted by law.

1.8.2 Any currency conversions required to be effected by the Bank pursuant to this right shall be effected in accordance with the usual practice of the Bank

1.9 Statements

1.9.1 The Bank will provide Borrower with a statement of account periodically and in the frequency and medium selected by the Borrower during the application for the loan. The Borrower may dispute all or part of the statement delivered to the Borrower by sending to the Bank a written notice of your objections.

1.9.2 The statement will show the Borrower's outstanding balance and, where applicable, the minimum repayment owing to the Bank and the date by which it is to be made.

1.9.3 The Bank may adjust debits and credit to the Borrower's account and account balances to reflect both the Borrower's and the Bank's legal obligations correctly

2. DEFAULT

2.1 Events of Default

The Bank shall not be obliged to advance the Loan, or where the Loan has been advanced, the Bank may convert your Loan to one repayable immediately on demand (including principal, interest and all Other Amounts) and/or we may revise any of the terms and conditions and/or increase the interest rate charged and the Securities will become enforceable in each and every of the following events:-

2.1.1 If the Borrower/guarantor fails to observe or perform something hereby required to be done or some covenant or condition hereby required to be observed or performed under this Agreement and the Borrower fail to remedy the breach within 7 (seven) days of notice having been given to you to do so; or

2.1.2 If the Borrower does, or permits to be done, anything which the Borrower has

herein agreed not to do or permit to be done; or

2.1.3 If the Borrower dies or becomes medically incapable of conducting his/its affairs or

2.1.4 If any event occurs which in the opinion of the Bank will or could have a material adverse effect on the Borrower's/Guarantor's obligations to the Bank under this Agreement or the Borrower's/guarantor's ability or willingness to perform or comply with any of its obligations under this Agreement.

2.1.5 **Misrepresentation** – if any representation or warranty given by the Borrower/Guarantor (or any director or officer thereof if the Borrower/Guarantor is a corporation) in connection with your loan or any documents supplied by you is, in our opinion, incorrect, incomplete or misleading; or is untrue in any material respect; or

2.1.6 **Winding Up** – if the Borrower/Guarantor is a corporation and if an order is made or a resolution passed for the winding-up of the Borrower/Guarantor, or if a petition is filed for the winding-up of the Borrower/Guarantor under the *Insolvency Act of 2015*; or

2.1.7 **Bankruptcy** – if the Borrower/ or any guarantor commits or threatens to commit any act of bankruptcy or becomes insolvent or makes an assignment or proposal under the *Insolvency Act of 2015* or a general assignment in favour of its creditors or a bulk sale of its assets, or if a bankruptcy petition is filed or presented against the Borrower/or guarantor; or

2.1.8 **Arrangement** if any compromise or arrangement between you and your creditors is sanctioned or otherwise becomes effective; or

2.1.9 **Execution Etc.** if any execution, sequestration, extent or any other process of any Court become enforceable against the Borrower/Guarantor or if a distress or analogous process is levied against the property of the Borrower/Guarantor or any part thereof; or

- 2.1.10 If any guarantor in respect of your indebtedness to us delivers a valid and effective notice of termination of liability under such surety or guarantee; or
- 2.1.11 **Other Indebtedness** – if the Borrower permits any sum which has been admitted as due by the Borrower or is not disputed to be due by the Borrower and which forms or is capable of being made a charge upon any of the Property in priority to the Securities to remain unpaid after proceedings have been taken to enforce the same as a prior charge; or
- 2.1.12 **Default in Other Payment** – if the Borrower defaults in payment of any indebtedness or liability to the Bank (whether secured hereby or not) or to any other lender; or
- 2.1.13 **Sale or Lease** – if, without the prior written consent of the Bank, the Borrower/Guarantor sells, agrees to sell, leases, agrees to lease or otherwise disposes or agrees to dispose of the Lands and or any Security or any part or parts thereof or any interest therein; or
- 2.1.14 **Mortgage or Encumbrance** – if, without the prior written consent of the Bank, the Borrower/Guarantor grants or agrees to grant any further Charge of the Security or any part or parts thereof or any interest therein or otherwise permits the Security to be encumbered in any manner other than by permitted encumbrances; or
- 2.1.15 **Change of Control** – if the Borrower/Guarantor is a corporation and if, without the prior written consent of the Bank, there is in the opinion of the Bank a change of effective control of the Borrower/guarantor; or
- 2.1.16 **Default under Securities** – if an event of default occurs under any of the Securities and or the Borrower/Guarantor fails to provide any additional security when so requested and/or called on by the Bank and or if any security for any of your indebtedness to the Bank becomes enforceable or subject to seizure by a court or a government body or an authority, whether such security is enforced or not or
- 2.2 **Waiver**
- The bank may waive any Event of Default, provided always that no waiver by the Bank or any failure to take any action to enforce its rights or to enforce or any security will extend to or be taken in any manner whatsoever to affect any subsequent Event of Default or the rights resulting there from.
- 2.3 **Remedies Not Restrictive**
- All remedies stipulated for by the Bank hereunder or in any of the Securities will be deemed to be in addition to and not restrictive of the remedies which the Bank might be entitled to at law or in equity and the Bank may realize any of the Securities or any part thereof in such order as it may decide and any such realization by any means will not bar realization of any other security or any part or parts thereof nor will any single or partial exercise of any right or remedy preclude any other or further exercise thereof nor will the failure on the part of the Bank or any delay in exercising any rights under this Agreement or any of the Securities operate as a waiver.
- 2.4 **Indemnity**
- Notwithstanding any other provision of this Agreement, the Borrower will fully indemnify and hold the Bank harmless from and against any loss, expense, damage or liability incurred by it which the Bank may sustain or incur as a result of any Event of Default.
3. **SECURITY AND GUARANTEES**
- 3.1 **Custody**
- The Borrower/Guarantor shall, on or before registration of the Security, deposit with the Bank the title deeds, grants, certificates of title, indentures, assignments, licenses and leases of the property, share certificates and all other documents of title (“the title documents”) and, during the period of the Loan Agreement, hand to the Bank the policies of insurances and title documents relating to the security together with any collateral documents and insurance premium receipts and the Bank shall retain all the title documents in safe custody
- 3.2 **Registration**
- 3.2.1 All indebtedness for the time being owing by the Borrower to the Bank will be secured by any security and /or guarantee(s) which may be currently

- held or which may be required now (as specified in this Agreement) or be subsequently held by the Bank
- 3.2.2 All securities to be taken by the Bank shall be in the form agreed by the Bank and shall be prepared, executed and perfected at the Borrower's cost by Advocates on the Bank's panel
- 3.2.3 The Borrower/Guarantor will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents (including certificates, consents, declarations, affidavits, reports and opinions) and things as the Bank may reasonably request for the purpose of giving effect to this Agreement or for the purpose of establishing compliance with the representations, warranties and conditions of this Agreement or any of the Securities
- 3.2.4 The Bank will, at the expense of the Borrower, register, file or record the Securities in all offices/registries where such registration, filing, or recording is necessary or of advantage to the creation, perfection and preserving of the security interests arising pursuant thereto and renew such registrations, filings and recordings from time to time as and when required to keep them in full force and effect. The Borrower acknowledges that the forms of the Securities have been prepared based upon the laws of Kenya applicable thereto in effect at the date of this Agreement and that such laws may change. The Borrower/Guarantor agrees that the Bank will have the right to require that the forms of this Agreement and any of the Securities be amended or supplemented to reflect any changes in such laws, whether arising as a result of statutory amendments, court decisions or otherwise, in order to confer upon the Bank the rights and security interests intended to be created thereby.
- 3.3 **Assessments/ Valuation**
- 3.3.1 The Bank may, from time to time, require any asset/property over which we hold a security to be valued, at your expense, by Valuers approved by us. We reserve the right to instruct Valuers of our choice and to debit your account or accounts held with us with any expenses incurred
- 3.3.2 The valuation of the property by the Bank is to determine whether the securities have enough apparent value for the property to secure the debt, and to assess their placement value of the property for insurance purposes.
- 3.3.3 If the value of any security for the loan is no longer adequate or the Borrower's management of the Borrower's accounts increases the Bank's risk regarding the loan or any other amount owing to the Bank in terms of any other agreement, the Bank will have the right to ask the Borrower to provide the Bank with additional collateral to secure repayment of the debt, vary the terms and conditions of the loan agreement or to increase the interest rate above the rate currently being charged. The Bank will give a thirty (30) day notice of the variation.
- 3.3.4 The Bank uses various methods to assess the value of properties offered to it as security for loans. These methods may involve a physical assessment of the property, or be based on statistical data provided. The assessment is for the Bank's internal use only and the Bank does not warrant the accuracy thereof.
- 3.3.5 The Bank accepts no liability for any defects whether latent (that is, existing but not active or developed or visible) or patent (that is, obvious) in respect of either the land or improvements. The Bank will not advise on any matter, especially improvements, from the aspect of structural integrity, conformity with approved building plans, thenational building regulations nor the land and improvements for suitability to underlying geological conditions or flooding if the Borrower has concerns regarding the property, it is the responsibility of the Borrower to seek appropriate independent expert advice

3.4 Maintenance

The Borrower/Guarantor shall at all times whilst any part of the debt is outstanding keep and maintain the Security in good repair to the satisfaction of the Bank. The Borrower/Guarantor shall ensure that the Security conforms to the requirements of any competent public or other authority, and shall make no material alterations or improvements to the Security or remove the buildings or any part thereof without obtaining the prior written consent of the Bank. The Bank or its duly appointed agents shall be entitled at all reasonable times to enter upon and inspect the property for the purposes of valuation, at the expense of the

Borrower. If the Borrower has failed to comply with these conditions, the Bank in its discretion may, on behalf of and at the cost of the Borrower, pay any sum necessary for the repair, maintenance, preservation and upkeep of the security, including for compliance with the requirements of any competent public or other authority. Any moneys paid by the Bank in this regard can be claimed immediately and shall be payable by the Borrower on demand and shall bear interest at their maximum rate permitted by law

3.5 Rates, Land Rent and Taxes

3.5.1 The Borrower shall, on or before the due dates, pay all charges in respect of the property, inclusive of rates, land rent, taxes, licenses and any other charges and shall produce proof, at the request of the Bank, of having done so. Notwithstanding the foregoing, the Bank shall be entitled at its option to make payment on the Borrower's behalf of any such charges without reference to the Borrower and without being obliged to wait until the Borrower is in arrear therewith and which amounts shall, be recoverable from the Borrower.

3.5.2 It shall be the Borrower's responsibility to notify the Bank in writing of any arrears in respect of rates, taxes, charges, insurance premiums, rent and other imposts and fees of whatsoever nature which may at any time become owing to any competent public or local authority.

3.6 Use, Letting or Charging of Property

3.6.1 The Borrower/Guarantor may not let charge or in any way further alienate, burden, encumber or give up possession and or occupation of the security or any part of it without the prior written consent of the Bank.

3.6.2 The Borrower/Guarantor may not use the security or any part thereof for purposes other than the intended use at the time that the loan was granted, without the prior written consent of the Bank and prior notification to the insurance company as may be required under any Insurance policy held.

3.7 Expropriation

3.7.1 If the whole or any part of the Security is lawfully expropriated by any competent authority, the Borrower/Guarantor irrevocably

appoints the Bank and in the Bank's interests to receive all compensation and to make any claims and sign any documents as the Bank may consider necessary or desirable.

3.7.2 The Bank will pay to the Borrower any amount received by the Bank in regard to such expropriation after deducting the amounts due under the loan agreement and, the costs incurred by the Bank.

3.8 Continuing Security

The Security is to be a continuing security for the payment of all sums payable to the Bank notwithstanding any intermediate payments or settlement of accounts, or the Bankruptcy, death, incapacity of the Borrower, winding up, liquidation or dissolution of the Borrower (as the case may be) or any change in the Borrower's status, constitution, control or ownership for the payment of all sums including interest, fees, commission, costs, charges and expenses and the satisfaction of all liabilities, present or future, absolute or contingent for which the Borrower now is or may at any time hereafter be liable to the Bank and is to be in addition to and without prejudice to any other security which the Bank may now or subsequently hold in respect of such liabilities. If there is any conflict between this Agreement and a subsequent security the provisions of the subsequent security shall prevail.

3.9 Compliance with Laws

The Borrower / Guarantor shall, at all times, comply with the conditions of title, the provisions of all servitudes and town planning schemes, environmental laws and with all laws, bylaws, and regulations applicable to or incumbent on the Borrower or the Security

4. INSURANCE

4.1 The Borrower will obtain and keep in force insurance which meets the requirements set out in this Agreement and whenever and to the extent required in writing by the Bank, the Borrower will;

4.1.1 furnish a certificate by an independent appraiser or insurance adjuster selected by the Borrower from the list of Insurers approved by the Bank as to the sufficiency of such insurance, which certificate will be conclusive as against the Borrower both as to the amount of insurance required hereunder and the perils against which coverage is required hereunder and the Borrower will immediately insure in accordance with such certificate;

- 4.1.2 cause to be endorsed in such form as may be required by the Bank on the policies evidencing such insurance a notation that any amounts payable under such policies will be paid to the Bank as first loss payee and or as its interest may appear; and
- 4.1.3 deposit with the bank every policy and renewal certificate for such insurance or a certified copy thereof.
- 4.2 The Bank may at any time during the period of the loan insure and or require the borrower to insure the security with an insurance company approved by the Bank against loss , damage,theft,fire and such other risks(including political riot or civil commotion) as the Bank decides is necessary. The insured amount will not be for less than the minimum replacement value of the Security from time to time as determined by the Bank. The Borrower must ensure compliance with the Borrower's responsibilities as set out in the insurance policy and this Agreement, and will have no claim against the Bank for any loss suffered by the Borrower if the replacement value for insurance purposes is found to be different to the actual replacement value.
- 4.3 **Homeowners Insurance**
- Where applicable, the Borrower will arrange insurance in a form acceptable to the Bank for the full insurable value of the Lands, but in no event for less than the total amount of loans secured by the property, and will insure and keep insured all buildings, fixtures, equipment, inventories and improvements located on the Lands. If the Borrower is not the beneficial owner of the Lands, all beneficial owners are also to be shown as named insured's on the insurance policies and in the event of a change in beneficial ownership, the change is to be reflected in the insurance policies.
- 4.4 **Credit Life Assurance**
- The Bank may where applicable require all loans to have adequate loan protection cover. The Bank may therefore require the Borrower to take out the appropriate Insurance cover in order to secure the loan in event of your death or permanent disability, until such time as the loan is settled in full. The cost of the loan protection insurance covers shall at the Bank's sole discretion either be deducted from the loan amount upon disbursement or included in the monthly instalments. The Loan Protection Benefit remains valid during the period of the Borrower's full compliance with this Agreement and terms and conditions of the Insurance policy.
- 4.5 The Bank reserves the right, at any stage, in the sole and absolute discretion of the Bank, to terminate the existing insurance or to elect not to renew an insurance policy. If the Bank elects either of these options, it will notify the Borrower of its decision in writing and it will furnish reasons for this decision. The Borrower shall immediately thereafter arrange for another insurance cover.
- 4.6 In all instances it shall be Borrower's onus and sole responsibility of ensuring full compliance with the terms and conditions of the Insurance policy including but not limited to payment of all the premiums as indicated on the date specified in the Insurance policy.
- 4.7 The Bank may at its own discretion and without prejudice to clause 4.6 herein above pay any premium on any policy of insurance taken out by the Borrower in connection with this Agreement and the Bank may debit such payment to any account of the Borrower with the Bank.
- 4.8 Nothing in this Agreement will oblige the Bank to take out or pay any premiums on any insurance on behalf of the Borrower. If any insurer repudiates any insurance policy for any reason, the Borrower will have no claim against the Bank.
- 4.9 The Bank may, without reference to the Borrower and without requiring the Borrower's consent, in the name of the Bank and/or the Borrower, adjust, settle, compromise and/or submit to arbitration any claims, demands, disputes and other matters arising from any policy of insurance referred to in this Agreement, and/or may institute or defend legal proceedings arising from the policy. The Borrower will have no claim against the Bank and/or any of its employees arising from any act or omission of the Bank and/or any of its employees in exercising or failing to make use of the authority granted in terms of this **clause 4.9** unless in exercising this authority, a claim arises as a result of wrongful or unlawful acts, or intentional misconduct, on the part of the Bank.
- 4.10 The Bank may grant receipts for any moneys received by it in respect of any insurance claim, settlement or compromise and may, at its sole discretion, use the moneys wholly or partially, either in reduction or payment of any amount due under the loan agreement or for the restoration of the Securities which are damaged or destroyed, under such conditions as the Bank may determine.

5. REPRESENTATION AND WARRANTIES

- The Borrower represents and warrants to the Bank that:
- 5.1 The Borrower has the necessary authority to borrow under the terms and conditions set out in this Agreement and to perform and observe its obligations.
 - 5.2 The Borrower hereby represent and warrants that all balance sheet, profits and loss statements and other information that have heretofore furnished to the Bank are true, correct and complete and present fairly and accurately its financial conditions including contingent liabilities of every type, and that there have been no material adverse changes in the financial conditions as reflected by the said reports, balance sheets and statements since the dates hereof.
 - 5.3 There has not been any material adverse change in the financial position of the Borrower from that set forth in the application requesting the Bank for the Facilities.
 - 5.4 All information submitted by the Borrower to the Bank, inter alia, on its financial position, net worth, details of indebtedness, presents accurately its state of affairs and the financial position of the Borrower as at such date.
 - 5.5 There are no outstanding encumbrances or contracts or arrangements conditional or unconditional for the creation by the Borrower or guarantor (where applicable) of any encumbrance on or over the proposed security for this Facility;
 - 5.6 If the Borrower is a corporation, neither the borrowings nor the issue of the Securities will be in contravention or constitute default under the constitutional documents of the Borrower.
 - 5.7 That Borrower will obtain and keep in force insurance which meets the requirements set out in this Agreement and whenever and to the extent required in writing by the Bank.
 - 5.8 that if the Borrower defaults in any covenant to be performed by it hereunder or under the Securities the Bank may perform any covenant of the Borrower capable of being performed by the Bank and if the Bank is put to any costs, charges, expenses or outlays to perform any such covenant, the Borrower will indemnify the Bank for such costs, charges, expenses or outlays and such costs, charges, expenses or outlays incurred by the Bank (including legal fees and charges incurred by the Bank) may be charged by the Bank to the account of the Borrower and will be secured by the Securities;
 - 5.9 That no person shall without the prior consent in writing of the Bank be registered as proprietor of the Securities herein or any part thereof or of any interest therein nor without such consent create or permit to arise any overriding interest affecting the securities or do or cause or permit to be done anything which may in any way depreciate jeopardise or otherwise prejudice the value to the Bank of the Securities nor permit any person to become entitled to any proprietary right or interest which might affect the value of the Securities or any part thereof
 - 5.10 You will, immediately on becoming aware of it, notify us of any material litigation, arbitration or administrative proceedings pending or, to the best of your knowledge, information threatened against you which may adversely affect your ability to honour any of the terms and conditions in this Agreement
 - 5.11 All monies due and payable to the Bank under this Agreement shall at all times rank higher in priority to all other present and future unsecured and unsubordinated obligations (including contingent obligations) of the Borrower with the exception of such obligations as are mandatorily preferred by law and not by contract
 - 5.12 The representations and warranties set forth in this paragraph and the Conditions are given and made on and as of the date hereof, shall survive the acceptance of this Agreement and are continuing representations and warranties which are deemed to be repeated during continuance of the Facilities.
- 6. INFORMATION**
- 6.1 The Borrower hereby irrevocably consent to the Bank collecting, receiving, compiling and retaining any Customer Credit Information about you for purpose of assisting us to perform our statutory assessment of your creditworthiness, deciding whether or not to grant you credit; and, monitoring your credit profile should we grant you credit, filing our Customer Credit Information with the Credit Reference Bureau whether or not the application for credit facilities is approved. You hereby acknowledge that the Customer Credit Information obtained or shared may include positive or negative information regarding your payment record provided that you have the right to lodge a complaint with the Credit Reference Bureau or to challenge any Customer Credit Information held by the Credit Reference Bureau in your respect.
 - 6.2 The Bank may verify the information on the application and may make whatever enquiries we consider necessary and the Borrower hereby agrees that the Bank may hold and process, by computer or otherwise, any information obtained about you as a consequence of the

loan contemplated in this Agreement include personal data in our systems which may be accessed by the Bank, and other companies in our group for credit assessment, statistical analysis, including behaviour and scoring, and to identify products and services (including those supplied by third parties) which may be relevant to you; and permit other companies within our group to use personal data and any other information we hold about you to bring to your attention to products and services which may be of interest to you.

6.3 The Borrower confirms and agrees that the Bank may at any time and at its sole discretion, carries out credit checks on the Borrower with the Credit Reference Bureau or any other relevant Authority or credit reference agency. In the event of default on the Borrower's part or any of its obligations under this letter or under the Security, the Bank may at its sole discretion supply such information as it deems appropriate to the Credit Reference Bureau or any other Authority or relevant credit reference agency. Other Banks or institutions in assessing credit applications and for occasional debt tracing and fraud prevention may use this information.

6.4 The Borrower further agree that we may disclose your personal data and/or information, including data and information relating to this loan and any documents referred to herein, or your assets, business or affairs outside our group whether such personal data and/or information is obtained after you cease being a customer or during the continuance of the bank customer relationship or before such relationship was in contemplation, for fraud prevention purposes, to licensed credit reference agencies or any other creditor, Public Authority, and if you are in breach of this agreement or any documents referred to herein; to our external lawyers, auditors, any guarantor, third party pledge or security providers and other subcontractors or persons acting as our agents; to any person who may assume our rights under this loan; if we have a right or duty to disclose or are permitted or compelled to do so by law; and for the purpose of exercising any power, remedy, right, authority or discretion relevant to this agreement or any other document.

6.5 You acknowledge and agree that, notwithstanding the terms of any other agreement between you and us, a disclosure of information by us in the circumstances contemplated by this clause does not violate any duty to you, either in law or pursuant to any agreement between you and us, or in the ordinary course of banking business and the customs, usage and practice related thereto. Disclosure as aforesaid may be made without reference to or further authority from you

and without inquiry by us as to the justification for or validity of such disclosure

7. ASSIGNMENT

7.1 The Borrower is not entitled to transfer or delegate all or any part of its rights or obligations under this Agreement without the prior written consent of the Bank.

7.2 The Bank is at any time entitled, without the consent of or notice to the Borrower/guarantor, to assign, transfer and or delegate all or any part of its rights, benefits or obligations under this Agreement to any person. The Borrower shall enter into all documents specified by the Bank to be necessary to give effect to any such assignment or transfer.

8. NOTICES

8.1 All notices which may or are required to be given herein or pursuant to this Agreement or relating to the Securities shall be in writing and may be given :-

8.1.1 By Hand delivery by serving the same upon the party (or any officer of the party if it is a corporation) to be served, or

8.1.2 by mail by posting the same by prepaid registered mail addressed:

(i) to the Borrower at the postal address of the Borrower specified in this Agreement .

(ii) to the Bank at the address of the Bank specified in this Agreement

(iii) to the Guarantor, if any, at the address of the Guarantor specified in this Agreement;

or such other addresses as the parties may advise by notice in writing, or

8.1.3 by facsimile transmission to the telephone numbers of the parties hereto specified in this Agreement or such other facsimile telephone numbers as the parties may advise by notice in writing or

8.1.4 by electronic mail to the last known email address or

8.1.5 by advertisement in a daily newspaper with national circulation published in the Republic of Kenya

8.2 Receipt of Notice

Subject to Clause 7.1, any notice shall be deemed to have been received and effectively served

8.2.1 if served personally, at the time of delivery,

8.2.2 if mailed, on the Seventh Business Day following posting, and

8.2.3 if sent by facsimile transmission, at the time of transmission.

8.2.4 if by advertisement in a local daily newspaper shall be effective on the first business day following the date of advertisement.

8.2.5 if by electronic mail on the first known business day following transmission

8.3 Notwithstanding any other provisions of this Agreement any notice received or otherwise deemed received after 4:00 p.m. on a Business Day or on a day which is not a Business Day will be deemed to have only been received on the next Business Day.

8.4 **Delays**

In the event that, at the time a notice is mailed or at any time during the period of Seven Days following such mailing, postal or airline or airport employees are engaged in a strike, work slowdown or other work stoppage at the place at which the notice is mailed or at the place to which the notice is mailed or at any point through which such notice must pass, such notice will be deemed to have been given and received at the time when such notice would be received in the ordinary course of the mails, allowing for such strike, work slowdown or other work stoppage.

8.5 Notwithstanding anything to the contrary in this Clause 7, a written notice or other communication actually received by any party shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen notice address, postal address, tele fax number or email address.

9. GENERAL

9.1 **No Obligation to Advance Term Loan**

Notwithstanding any other provisions hereof neither the execution of this Agreement nor the execution and delivery of the Securities or any other security required and from time to time given by the Borrower to the Bank will bind the Bank to advance the Loan nor will the advance of any part thereof bind the Bank to advance any un-advanced portion thereof.

9.2 **Records**

The information in the records of the Bank as to the Account and as to the Borrower being in default of this Agreement or the Securities or any of them and the amount outstanding hereunder and there under will be *prima facie* evidence of the obligations of the Borrower hereunder and under the Securities. The Borrower will, on reasonable notice to the Bank, be entitled to obtain extracts of all entries made in such records.

9.3 **Non-Merger**

The taking of a judgment or judgments or any other action or dealing whatsoever by the Bank in respect of any security given by the Borrower to the Bank will not operate as a merger of any indebtedness of the Borrower to the Bank or in any way suspend payment or affect or prejudice the rights, remedies and powers, legal or equitable, which the Bank may have in connection with such indebtedness and the foreclosure, surrender, cancellation or any other dealing with any such security will not release or affect the liability of the Borrower, or release or affect any of the Securities or any other security held by the Bank.

9.4 The Bank will have the right whenever it deems reasonably necessary either by its officers or authorized agents to enter upon the Borrower's premises and to inspect the undertaking, property and assets of the Borrower, all books of account and records of the Borrower and copies of all returns made from time to time by the Borrower to boards, agencies or governmental departments and to make extracts therefrom and generally to conduct such examinations as it may see fit and without limiting the generality of the foregoing, the Bank may request information from the Advocates, auditor and other advisors and agents of the Borrower for the time being concerning the affairs and the conduct of business of the Borrower and the Borrower hereby irrevocably authorizes and directs and this will constitute the sufficient authority and direction to any such Advocate, auditor or other person to disclose to the Bank such information as to any and all matters touching upon the affairs and conduct of the business of the Borrower whether of confidential nature or otherwise and any costs, expenses and outlays which the Bank may incur pursuant hereto may be charged to the Account

9.5 The bank may monitor or record calls between the Bank and the Borrower or an additional account holder so that the Bank can check instructions and make sure that we are meeting our service standards

9.6 **Enurement**

This Agreement and all its provisions will enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

9.7 **References to Law**

A reference in this document to a particular law means the law as amended from time to time and any law substituted therefore.

9.8 **Compliance with Laws**

The Borrower/Guarantor shall, at all times, comply with the conditions of title, the provisions of all servitudes and town planning schemes, environmental laws and with all laws, bylaws, and regulations applicable to or incumbent on the Borrower/Guarantor or the Security.

9.9 Indemnity on Supply of information

In the event that the Borrower requests the bank to send the Borrower a bank statement or any other information by any means, the Borrower agrees to indemnify Bank against any claim(s) or liability that may arise or be made by any person (including the Borrower) against it in consequence of the supply of such information by the requested means.

9.10 Rearrangement of the Loan Agreement

No rearrangement of any loan or alteration of the loan agreement will adversely affect the operation of any collateral given in respect of the loan (and/or any debt in respect of the loan), nor will it substitute the loan or adversely affect the rights of the Bank to sue in terms of the Charge or any such collateral, and all the provisions of the loan agreement shall apply to all or any such rearrangement or alteration fully and effectually, as if such rearrangement or alteration had been originally contained in the loan agreement.

9.11 Liability for Loss

The Bank will not be liable for any loss incurred by the Borrower/Guarantor in terms of this loan agreement, save and except where such loss is caused by the Bank's gross negligence, gross misconduct and/or wilful misconduct.

9.12 The continuance of the facilities to the date sanctioned is, dependent upon the accounts being conducted to our satisfaction at all times and on the understanding that overdraft facilities are always repayable on demand should the Bank deem it advisable to make such a demand.

9.13 The debt outstanding is payable on demand at the discretion of the Bank notwithstanding anything contrary herein contained

9.14 The Bank's obligation to make any disbursement of the facilities is also conditional upon the Borrower's compliance at the relevant time with the conditions of, and there being no breach of or default under this Agreement.

9.15 The Borrower shall promptly upon the request of the Bank supply, or procure the supply of, such documentation and other evidence as is requested by the Bank in order for the Bank to carry out and be satisfied that it has complied with all necessary "know your customer" or

other similar checks under all applicable laws and regulations

9.16 The Borrower shall supply to the Bank: promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against it or any Borrower, and which might, if adversely determined, have a material adverse effect; and such further information regarding the financial condition, business and operations of it or any Borrower as the Bank may reasonably request.

9.17 The Borrower shall comply in all respects with all laws to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations herein.

10. TERMINATION OF AGREEMENT

This Agreement will continue in full force and effect until the outstanding balance of the Loan (including principal, interest and all Other Amounts) has been paid in full in accordance with the provisions of this Agreement.

11. VARIATION

11.1 The Bank may, at its discretion, vary any of the terms and conditions from time to time on notice to you.

11.2 If any part of the Loan is denominated in a foreign currency ("the currency of the account"), payment under or the repayment of such Facilities will be made in such foreign currency

11.3 Any money received by the Bank, or by any person appointed by the Bank, in a currency other than the currency of the account may be converted by the Bank into the currency of the account or such other currency as the Bank considers necessary to cover the obligations or liabilities of the Borrower. The Bank shall use the Bank's spot rate of exchange for such conversion.

11.4 In the event of any legislation or extreme change in market conditions affecting the ability of the Bank to provide or fund facilities in foreign currency, the Bank reserves the right, at its sole discretion, to convert any foreign currency indebtedness by the Borrower into Kenya Shillings at the rate ruling on the day of such conversion.

11.5 In the event that the Bank demands repayment of any indebtedness of the Borrower, after such demand has been made, the Bank reserves the right, at its sole discretion, to convert any foreign

currency indebtedness by the Borrower into Kenya Shillings at the Bank's spot rate ruling at the day of such conversion.

11.6 In exercising the aforementioned rights to convert foreign currency indebtedness into the Kenya Shillings, the Bank will not be liable for any losses resulting from exchange rate fluctuations.

11.7 The Bank may immediately amend the pricing structure of the loan if there is any change in law, statute, regulation, ruling, directive, policy or any similar event with which the Bank is obliged to comply with

12 CHANGES IN LAW OR CIRCUMSTANCE

If by reason of any interpretation by a judicial body or the introduction or change in any law, regulation, treaty or official directive or in the compliance with any request from or agreement with or requirement of any Central bank or other fiscal, monetary or other authority (whether or not having the force of law):

- a) The Bank incurs a cost as a result of having entered into and/or performing any of its obligations under this Agreement or the Security; or
- b) There is an increase in the cost to the Bank of funding or maintaining all or any part of the Facility; or
- c) The Bank is unable to obtain the rate of return including any rate of interest and total interest chargeable on the Facility which it would have been able to obtain but for the Bank having entered into any commitment for the Facility; or
- d) The Bank becomes liable to make any payment on or calculated by reference to the Loan and/or to any sum received or receivable by it hereunder;

12.1 The Borrower shall from time to time on demand by the Bank promptly pay to the Bank amounts sufficient to indemnify the Bank against, as the case may be, such cost or reduction in the rate of return or such liability.

12.2 The Bank shall promptly notify the Borrower of the circumstances giving rise to the Borrower's obligation to make any such payment, giving reasonable details of how such cost, increased cost, reduction or liability has been calculated and attributed to the Facility or the Loan, which shall be conclusive in the absence of manifest error.

13. APPOINTMENT OF ATTORNEY

The Borrower (guarantor where applicable) hereby irrevocably appoints the Bank to be the Attorney of the Borrower/Guarantor and in the name and on behalf of the Borrower/Guarantor to execute and do any assurances, acts and things which the Borrower/Guarantor ought to execute and do under the covenants and Agreements herein contained and generally to use the name of the Borrower/Guarantor in the exercise of all or any of the powers hereby or by law conferred on the Bank.

14. SEVERABILITY

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions hereof nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

15 FORCE MAJEURE (EVENTS BEYOND OUR CONTROL)

The bank will not be liable for any failure to perform its obligations herein caused by reasons beyond our control or resulting directly or indirectly from the action or inaction of the government, any government authority, riot, strike, boycott, blockade, act of God, revolution, civil strike, change in legislation or extreme change in market conditions.

16. WAIVERS

No failure or delay by the Bank in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver for the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in this Letter are cumulative and not exclusive of any rights and remedies provided by law

17 GOVERNING LAW AND JURISDICTION

This agreement shall be governed by and construed in accordance with Kenyan law and it is hereby irrevocably agreed for the exclusive benefit of the Bank that the Courts of Kenya are to have jurisdiction to settle any disputes which may arise out of or in connection with this agreement and that nothing in this clause shall limit the Bank's right to take proceedings against the Borrower in any other Court of competent jurisdiction or Arbitrator, nor shall the taking or proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not..

BORROWER'S ACCEPTANCE. (for individual)

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I hereby acknowledge that we have read, understood and accept the terms and conditions of this Agreement and confirm my [our] intention to be bound by the said terms and conditions this.....day of20.....

the terms and conditions of this Agreement and confirm my [our] intention to be bound by the said terms and conditions as a guarantor to the Borrower on this.....day of20.....

SIGNED BY THE BORROWER)
In the presence of:)

.....)

Advocate)

GUARANTOR'S ACCEPTANCE

(for company).

We the Directors of ABDC Limited having been duly authorized to witness the affixation of the Company Seal of the guarantor to the Agreement pursuant to a Resolution of the Board of Directors dated hereby acknowledge that we have read, understood and accept the terms and conditions of this Agreement and confirm our intention to be bound by the said terms and conditions as a guarantor to the Borrower this.....day of20.....

SEALED with the Common Seal of the Guarantor)

XXXXXX Limited)

in the presence of:)

)
)
DIRECTOR)

)
)
DIRECTOR or SECRETARY)

Advocate

ACCEPTANCE. (for individuals)

I hereby acknowledge that we have read, understood and accept

Signed by the Guarantors

Name:

.....

In the presence of:

Advocate

Signed by the Guarantors

Name:

.....

In the presence of:

Advocate